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THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1968

—o—

RILEY LEON HUGHES

Petitioner,

vs.

J. HERMAN GENGLER
Respondent.

No. 877

PETITION FOR WRIT OF CERTIORARI

Petitioner in propria persona
RILEY LEON HUGHES
1306 G Street
Marysville, California
95901
Telephone: 743-5421, Ext. 348

Attorney for Respondent
John P. Hyland
Federal Bldg., 650 Cap. Mall
Sacramento, Calif.

SUBJECT INDEX

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NOTE: —

1. Source of reference material used noted in appendix.

2. The Honorable Judges of the SUPREME COURT should obtain a copy of the entire record of this case in order to better observe the unnecessary complications placed in the way of petitioner, obtaining justice. Those who have opposed this case can well afford long distance telephone bills. The husband of the petitioner's sister, a painter, had not much work in the winter of 1966, and had difficulty collecting for some of that. Petitioner had sent sister who wrote the emergency letter that is the root of of this case money, to buy food.

THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM 1968

RILEY LEON HUGHES Petitioner, vs. J. HERMAN GENGLER Respondent.	)	No.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice of the UNITED STATES, EARL WARREN and to the Associate Justices of the SUPREME COURT OF THE UNITED STATES.

The petition of RILEY LEON HUGHES for a WRIT OF CERTIORARI, to be directed to the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, of San Francisco, California, to review a judgment of that Court (No. 22122) entered on the second day of October, 1968, and rehearing denied on the thirtieth day of October 1968, in favor of the Respondent against the Petitioner, with BRIEF in support thereof.

To the Honorable members of the Court, your petitioner respectfully pleads:

I

Jurisdiction lies in the Supreme Court under Title 28 § 1254.

II

This case should be examined with respect to influence by the Supreme Court on the decision making of the lower courts in this case, by its decision in favor of William G. Barr, Acting Director of Rent Stabilization, a Federal Agency, in Barr vs. Matteo, 360 U.S. 564, 79 S. Ct. 1336. The conduct of Mr. Barr in that case was subject to the direct notice of the Congress and influenced by the Congress. The lower Courts have chosen in the present case to ignore arrogant conduct by the Respondent, a postmaster, far removed from the Congress and responsibility for policy making.

POSTAL MANUAL

See page 4 for direct quotations.

DOCUMENTS QUOTED

BRIEF FOR APPELLANT
ANSWERS TO BRIEF FOR APPELLEE
REVIEW OF THE SIGNIFICANT PARTS OF THE RECORD . . . BRIEF HISTORY OF THE CASE
(Copies forwarded)

III

The decision of the lower courts circumvents a parallel case, Teal vs. Felton, 90 U.S. N.Y. 12 Howard, 289, 13L. Ed. 990, which was properly allowed to proceed through the state courts. The postmaster's action in that case was not sanctioned by any government or postal regulation. (This case noted in Appeal Court's decision on Page 7.)

QUESTIONS PRESENTED

1. Whether the Respondent in this case, because of being a postmaster, is entitled to the government services he received.

2. Whether removal of this case from the small claims court was a proper legal maneuver.

(It has added strain and expense to the petitioner's search for justice.) The Judge of the small claims court would probably not have charged Mr. Gengler as much for telling him that receiving money for services not given, was not considered a legal practice, as he spent for the Appeal Bond. That cost him the sum of eleven ($11.00) dollars.

3. Whether the sum paid for special delivery service should be refunded, as required by the Postal Manual.

4. Whether the postmaster should have accepted the petitioner's complaint.

ARGUMENT

The substance of this case is the arrogant refusal by the Respondent, a postmaster, to grant to the petitioner, a postal patron, privileges recommended by the Congress and rights lawfully allowed to him by the Postal Manual. These privileges are service, the right to make a protest, and the right of a refund for services for which payment was made and not received. The authority for such privileges are:

> "TITLE 39 U.S.C. Sec. 2301
> (5) . . While the Postal establishment as all other Government agencies should be op-

erated in an efficient manner it clearly is not a business operated for profit of the raising of funds . . .

Section 2302 . . . (1) that the post office is a public service.

POSTAL MANUAL PART 313
CUSTOMER COMPLAINTS.

313.2 ORAL COMPLAINTS

.21 Employees must make a memorandum in writing on Form 1835, Record of call or visit, of all complaints received either in person or by telephone.

POSTAL MANUAL Part 147.23 Amount of Refund avaliable.

.231 Refund of 100 percent will be made:

f. When fees are paid for special delivery, special handling, and certified mail, and the article fails to receive the special service for which the fee has been paid."

Section 2301 of Title 39 is mentioned in petitioner's Answering Brief at the bottom of page 4; quotations from the Postal Manual in Brief For Appellant pages 10 and 11. These references just given were not quoted or considered in any way in the decision of the Appeals Court.

As the Respondent, postmaster was not thus acting within his duties as a posmaster, in not abiding by the above mentioned regulations, Section 1442 of Title 28 was improperly applied in this case. It is the position of the petitioner that government attorneys, as representatives of the United States Attorney General act as (Amicus Curiae) to serve to see that justice is served, and not to act as partisans bent upon thwarting any action taken against a fellow government employee. The Appeals Court made mere caustic comment on this action, lower part of page 3 of its decision. The action to thwart petitioner's effort to obtain justice is a violation of petitioner's civil rights under Title 18, 241, Conspiracy against rights of citizens, U.S. Supreme Court Reports, 201 ed 2d, Conspiracy 17 · civil rights statute - scope . .

The decision of the Appeals Court on pages 1, 2, and 3 describe the circumstances under which the petitioner was not allowed to receive a letter through his post office box that was marked AIR MAIL SPECIAL DELIVERY, although it arrived on a postal holiday and the post office had no home address of the petitioner to make special delivery possible. With respect to regulations quoted on Page 3of this document, logic should demand the following reasoning process:

"Q. Were you required to pay a fee for special delivery service?

A. Yes, full payment was demanded for special delivery service. Twenty seven (27c) was paid by the sister of the petitioner and three (3c) was demanded of and paid by the petitioner.

Q. Does the Postal Manual describe what constitutes special delivery service?

A. Yes, such service is described on page 5 last paragraph and page 6 of the decision of the Appeals Court.

Q. Were any of the services described applied toward the delivery of the letter to the petitioner?

A. No."

The Appeals Court affirms this in its decision, bottom of page 9, ". . . he (the petitioner) cites no cases, statutes, or regulations that require or make it a duty of a postal employee to 'indicate' the nature of the mail held for postage due or to ascertain an address 'connected with' a letter; and we can find none."

"Q. Was a complaint made to the postmaster Mr. J. Herman Gengler?

A. Yes a complaint was made.

Q. Did the postmaster offer to accept your complaint?

A. He refused to accept the complaint of the petitioner, that he was charged for services that he did not receive, he refused to accept any complaint whatsoever."

The decision of the Appeals Court: "We conclude the defendant postmaster in no way violated any law, statute or regulation of the United States or of the Post Office Department . . appellant is not entitled to three cents damages . . ." does not satisfy the above

reasoning, or the evidence presented in this case. Such a decision presents the petitioner with the duty to appeal.

When the petitioner protested to the Marysville, California postmaster, J. Herman Gengler, Respondent in this case, the action of the postal clerk in demanding and receiving an alleged deficiency in postage for alleged special delivery service, and the postmaster refused to accept the protest, the petitioner proposed that the judge of the local small claims court determine whether or not the postmaster's position was a legal one. To this proposal the Respondent, Mr. Gengler, said, "Go ahead . . ." It is the position of the Petitioner, that a gentlemen's agreement, or contract was made to allow the judge of the small claims court, to determine whether or not the collection of a fee for services not give and a refusal to accept a protest against such an act was against the law. This action was described in detail in the petitioners - REVIEW OF THE SIGNIFICANT PARTS OF THE RECORD OF THE ABOVE CASE FOR THE USE OF THE UNITED STATES COURT OF APPEALS AT SAN FRANCISCO, CALIFORNIA AND A BRIEF HISTORY OF THE CASE, and referred to in the opening statement of Brief For Appellant, page 7. These documents should be made available to the Supreme Court, This action by Mr. Gengler, the Respondent, was not mentioned in the decision of the Appellate Court.

A reporter, Wallace Lagorio, for the Sacramento Bee, (a Sacramento newspaper that has consistently supported Federal Administration policies) in an interview with the petitioner, quoted the result of inter-

viewing defending personnel, "A decision for the appellant would encourage numerous similar suits". This case has attracted considerable publicity, and the avoidance of the issues in this case are apparent.

The petitioner wishes to emphasize to the Honorable Judges of the Supreme Court the existence of a legal and social duty to take cognizance to the pressures that have been exerted to defeat justice in this case. The significance of the pressures far outweigh the intrinsic worth of the case. Personal letters like love are difficult to evaluate and both can convey passion, or sacrifice. The moral obligation to let justice prevail should override any amoral pressure to consider expediency and case load. This case could be better used to justify more courts, than to view the struggle here below with a reluctance to become involved, not unlike that of those who watched Catherine Genovese' last half hour, as she was being stabbed near her Kew Gardens apartment in New York. To make the struggle for justice beyond one's reach or the cost too high, is to give aid to subversive influence and invite the cost of disorder. The Petitioner prays that the Judges of the United States Supreme Court find that the Respondent, J. Herman Gengler was not acting in keeping with the duties attached to the office of postmaster in refusing to accept the petitioner's reasonable complaint, that such action was in violation of Postal Manual regulations and that the case was improperly removed from the small claims court.

Respectfully submitted,

RILEY LEON HUGHES
703 B Street
Marysville, California
95901
Telephone: 743-5421, Ext. 348
Petitioner

Dated: December 10, 1968

APPENDIX

Decision of the U.S. COURT OF APPEALS FOR THE NINTH DISTRICT:

We conclude the defendant postmaster in no way violated any law, statute or regulation of the United States or of the Post Office Department, and was entitled to require defendant to pay the three cents before delivering the letter here involved; and hence that appellant is not entitled to three cents damages, or any other sum; and we find that he suffered no damage whatsoever.

Opinion of District Court (Sacramento) as quoted by the APPEALS COURT: (page 4)

The District Court was of the opinion that the three cents appellant seeks was voluntarily paid by him to the government, that no statute, law or regulation requires him to so pay; that he could have refused the letter; that there was no compulsion or coercion on him, but a voluntary payment, though under protest, was made by him, and hence plaintiff below could not recover.

BILL OF COSTS presented to petitioner subsequent to decision of APPEALS COURT from DISTRICT COURT $33.20.

TABLE OF AUTHORITIES

CASES

Barr vs. Matteo, 360 U.S. 564, 79 S. Ct. 1336

Teal vs. Felton, 90 U.S. N.Y. 12 Howard 289, 13L Ed. 990

CODES

Title 18 241
Title 28 Section 1442
Title 28 Section 1254
Title 39 Section 2301
U.S. Supreme Court Reports, 201 ed 2d
Conspiracy 17 · civil rights statute

POSTAL MANUAL

See page 4 for direct quotations.

DOCUMENTS QUOTED

BRIEF FOR APPELLANT
ANSWERS TO BRIEF FOR APPELLEE
REVIEW OF THE SIGNIFICANT PARTS OF THE RECORD . . . BRIEF HISTORY OF THE CASE
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THE SUPREME COURT
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RILEY LEON HUGHES

Petitioner,

vs.

J. HERMAN GENGLER
Respondent.

No. 877

PETITION FOR WRIT OF CERTIORARI

APPENDIX OF OPINIONS AND JUDGMENTS PREVIOUSLY MADE:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RILEY LEON HUGHES, *Appellant,* vs. J. HERMAN GENGLER, *Appellee.*	No. 22,122

[October 2, 1968]

Appeal from the United States District Court
for the Eastern District of California

Before: BARNES and DUNIWAY, Circuit Judges, and McNICHOLS, District Judge,

BARNES, Circuit Judge.

Appellant by this appeal seeks three cents damages, and his costs. We think the time of postal employees and the courts could be better spent than in determining the dispute herein delineated. We might well affirm the judgment below on the basis of the maxim "de minimis non curat lex," but appellant's earnestness and sincerity entitle him to a better explanation of why he cannot recover. The law should not tolerate even a small injustice, nor the appearance of it.

Appellant was the addressee of a Special Delivery Air Mail Letter, deposited in rural mail box #734—Route 2, near Escondido, San Diego County, California, and picked up by a rural mail carrier for transportation to and delivery in Marysville, Yuba County, California. Appellant complains that upon its arrival, the letter was withheld from "delivery" for an alleged postage deficiency of three cents.

The letter contained on its face (1) seven 5 cents stamps; (2) the return rural route box number of the sender; (3) a hand-printed notation (apparently made by sender) "Air Mail—Special Del.", and it was stamped "Air Mail—Special Delivery" once on the face, and four times on the reverse, apparently by the post office.

The special delivery charge was 30 cents. The air mail charge was then 8 cents. The total postage was therefore deficient by three cents.

The letter was addressed:

"Mr. R. Leon Hughes
P. O. Box 651
Marysville, California"

The letter apparently arrived at Marysville on May 30, 1966, for it bears on its back the usual post office circular stamp, and within the circle:

Marysville
May
30
6 A.M.
1966
Calif.

The letter being addressed to a post office box, and being special delivery, the postmaster was authorized to deliver "to the post office box," or "hold for delivery through the general delivery window, unless the addressee has given written notice that such mail be delivered to his residence or place of business." (Postal Manual 166.4). Appellant states in his brief (p. 14) that no such notice had ever been given by him to the Marysville Postmaster.

The letter being without sufficient postage, the post office at Marysville left a notice in appellant's P. O. Box 651—on "P.O.D. form 3907, Notice to Call at Window[X] Mail with Postage Due."

Appellant had found it inconvenient to call for his mail on May 30, 1966, a holiday. He explains this in his "Answer to Motion for More Definite Statement," filed in the District Court:

"Most of my mail was political campaign literature prepared by volunteer clerks. There was nothing in the P.O.D. form 3907 to indicate mail of importance was being held. It was two days before I became sufficiently involved to take time off from work to call for the mail." (C.T. 23)

Appellant finally called for his mail during the daytime on June 2nd or 3rd. He was shown the letter described above, saw the seven 5 cents stamps on it, and we quote from appellant's brief what occurred:

Appellant said:

"'There appears sufficient stamps on the letter to me.'

The clerk replied, 'It is marked Air Mail Special Delivery and there is three cents due on it.'

'I certainly am not getting special delivery service,' I protested.

'If you want this letter, you will have to give me three cents' was his immediate demand.

I gave him three cents under protest. He placed an ordinary three cents stamp on the envelope and canceled [sic] it, being careful not to let the date of cancellation touch the envelope." (C.T. 31)

Appellant, being indignant, thereupon filed suit against the Marysville Postmaster in the Small Claims Court of the Marysville Judicial District, County of Yuba, State of California, for $127.02. (C.T. 4) In an apparent attempt to discourage the appellant, his case was removed to the United States District Court, Northern District of California, Northern Division, sitting in Sacramento. (28 U.S.C. 1442 (a)(1)) Without such removal, which gave the District Court jurisdiction, the action would have remained in the State Courts. *Teal v. Felton,* 53 U.S. 284, 289 (1851). No jurisdiction existed under the Federal Tort Claims Act. 28 U.S.C. § 2680(b). Jurisdiction here rests on 28 U.S.C. § 1291.

In the District Court, numerous motions were heard, and appellant was required to itemize his claim for damages, which he did as follows:

"To collecting for services not rendered	$ 0.03
For failing to print date on letter	10.00
For having to lay off from work	.30
For refusal of postmaster to accept protest	25.00
Small Claims Court fee	2.00
Cost of preparing papers for trial	89.70
	$127.03" (C.T. 25)

It might properly be noted that appellant asserted he is "more interested in feeling that any mail will be handled in an equitable manner, than in receiving any damages." (C.T. p. 25) We also note that in addition to the damages specified above, the appellant requests:

> "that since the trial is a nervous strain upon myself [sic], that the minimum award be one (1.00) dollar a day from the time I filed suit, June 6, 1966, until the case is properly adjudicated."

Appellant appeared in propria persona in the District Court and appellant reduced his demand to three cents plus his $2.00 filing fee. The matter was heard on April 27, 1967, and judgment was entered for the defendant and against the plaintiff.

The District Court was of the opinion that the three cents appellant seeks was voluntarily paid by him to the government, that no statute, law or regulation requires him to so pay; that he could have refused the letter; that there was no compulsion or coercion on him, but a voluntary payment, though under protest, was made by him, and hence plaintiff below could not recover.

A motion for new trial was made and denied. Appeal was taken here in propria persona.

We do not reach the point on which the case was decided adversely to appellant in the District Court.

Appellant urges that the rules in the Postal Manual are adequate to govern in this case. We agree, but we do not interpret them as appellant would have us. It is the duty of this court to take judicial notice of the regulations of the Post Office Department. *Deal v. U.S.*, 11 F(2d) 3 (9th Cir. 1926), *Rev'd. on other grounds.* 274 U.S. 277 (1927); *Caha v. U.S.*, 152 U.S. 211 (1894)

Appellant's sister who sent the letter, addressed it to a post office box at a letter carrier office in Marysville, California. Postal Manual Part 166.22 states "the special delivery fee must be prepaid in addition to regular postage." This she did not pay. Postal Manual Part 166.4 requires such a letter to be delivered to the box, or through general delivery, when no other instructions have been given for such mail by the boxholder. Postal Manual Part 354.611 requires the same type of delivery of special delivery letters at any city delivery office, i.e. "as addressed, unless other instructions have been received."

Neither the postman who received the letter on his rural route near Escondido nor the postmaster at that town could possibly have known whether this appellant had delivered to the postmaster in Marysville, California, the "instructions" referred to in Postal Manual Parts 166.4, and 354.611 which provide for the exceptions to the general rule requiring delivery "as addressed."

The letter as mailed, had insufficient air mail postage. It could have been handled, therefore, as first class surface mail. Whether it was or not, we do not know, and that question is here immaterial for appellant makes no complaint of any act of defendant until after the letter arrived in Marysville.

Thus, the letter could not be delivered as a special delivery letter, through no fault of the post office or its employees. But, urges appellant (1) the form left in his box was form 3907 (supra), and it should have been form *3955;* (2) nothing on the card left (form 3907) indicated that it was any different than his other mail, and (3) it was the duty of the clerk at Marysville "to ascertain whether an address was available associated with the post office box to make special delivery service possible." The difficulty with appellant's second and third points above are that he cites no cases, statutes, or regulations that require or make it a duty of a postal employee to "indicate" the nature of the mail held for postage due; or to

"ascertain" an address "connected with" the address appearing the letter; and we can find none.

As to the question of the form to be used (3907 v. 3955) th latter is mentioned in Postal Manual Part 166.42, but this subsection .42 applies only to "Delivery in Mail Receptacles," and reads:

> "When no one is at the address to receive mail, the *messenger,* if he can determine that the *occupants* are absent for not more than 1 day, will leave the mail and a notice on Form 3955, Special Delivery Notice,"

which notice by Part 166.43, is to be:

> "left on the *door knob* or *handle,* under the *door,* or in the *receptacle.*" (Emphasis added.)

This subsection .42 of 166 follows subsection 41 of 166 which applies to special delivery deliveries *at letter carrier offices.* The post office at Marysville is a letter carrier office. It seems obvious the language of .42 applies to deliveries on mail carrier routes outside of post office buildings, and not to post office boxes located within post office buildings. It is difficult to envisage a *messenger* employed to deliver a special delivery letter to a post office box within the post office, and impossible to envisage the *occupants* of a post office box, or a *door knob* on it, or a *door* under which the letter would be placed—these places for deposit of form 3955 being alternative places other than the *receptacle* itself. The distinction between receptacle and box seems clear and reasonable.

Likewise, appellant's reliance on Postal Manual Part 354.7 is misplaced. It applies to payments by the postmaster to his employees for making delivery of special delivery letters. They receive no compensation when the letter is delivered to a post office window or box. But they would if the box holder had left written instructions with the post office as to where his special deliveries should be delivered. As we said above, the post office first seeing the letter has no way of knowing whether this required notice has been delivered by the addressee or not; and hence, the special delivery fee will be and must be, collected in the first instance, *i.e.,* before mailing. Part 354.7 does not apply to the obligation of the sender or the recipient of the letter to pay the prescribed postage and special delivery fee.

Nor does *Teal v. Felton, supra,* relied upon by appellant, help him here. In it, the Supreme Court, on a case coming before it from the State Court of New York, held the postmaster's reliance (in demanding a letter rate for a newspaper because of an "initial or letter" upon the newspaper wrapper) was misplaced, inasmuch as the regulation was issued under the Act of 1825, as passed by the Congress, which Act read:

> "If any person shall enclose or conceal a letter or other thing, or any memorandum in writing in a newspaper . . ." or "if any memorandum shall be written on a newspaper," and "transmitted by mail, (the sender) shall be charged with letter postage."
>
> "We do not think that the initial or letter upon the wrapper of the newspaper in this case subjected it . . . to letter postage."

Thus, said the Supreme Court in *Teal,* it not being within the intent of Congress to so legislate, the postmaster could not make up and/or substitute his own rules.

In the instant case, the defendant made up no rules for a particular letter; he precisely followed lawful and authorized regulations.

We conclude the defendant postmaster in no way violated any law, statute or regulation of the United States or of the Post Office Department, and was entitled to require defendant to pay the three cents before delivering the letter here involved; and hence that appellant is not entitled to three cents damages, or any other sum; and we find that he suffered no damage whatsoever.

Affirmed and remanded with instructions to the District Court to enter judgment for defendant, with costs, in accordance with this opinion.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RILEY LEON HUGHES, *Appellant,*	)	
vs.	)	NO. 22122
J. HERMAN GENGLER, *Appellee.*	)	

APPEAL from the United States District Court for the Eastern District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed and remanded with instructions of the District Court to enter judgment for defendant, with costs, in accordance with this opinion.

Filed and entered OCT. 2, 1968

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from proceedings of Wednesday, October 30, 1968

Before: BARNES and DUNIWAY, Circuit Judges, and McNICHOLS, District Judge

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed Friday, Oct. 22, 1968 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

Form A. O. 133 (1-63)

BILL OF COSTS

United States District Court
for the

EASTERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED
NOV 21 1968
CLERK, U. S. DIST. COURT
Eastern District of Calif.

RILEY LEON HUGHES
vs.
J. [redacted]

Judgment having been entered in the above entitled action on the 21st day of November, 1968, against Riley Leon Hughes the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	$
Fees of the marshal	
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	
Fees and disbursements for printing	13.20
Fees for witnesses (itemized on reverse side)	
Fees for exemplification and copies of papers necessarily obtained for use in case	
Docket fees under 28 U. S. C. 1923	20.00
Costs incident to taking of depositions	
Cost as shown on Mandate of Court of Appeals	
Other Costs (Please itemize)	
Total	$ 33.20

State of California
County of Sacramento } ss:

I, WILLIAM B. [redacted], do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to Riley Leon Hughes, 1608 Elm Street, Marysville, California with postage fully prepaid thereon.

Please take notice that I will appear before the Clerk who will tax said costs on November 27, 1968 at 9:00 a.m.

WILLIAM B. [redacted]
Assistant U. S. Attorney
Attorney for Defendant

Subscribed and sworn to before me this 21st day of November A. D. 1968 at Sacramento, California

FLORENCE C. O'[redacted]
Notary Public.

Costs are hereby taxed in the amount of $ this day of , 19 , and that amount included in the judgment.

Clerk.

By
Deputy Clerk.

NOTE: SEE REVERSE SIDE FOR AUTHORITIES ON TAXING COSTS.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RILEY LEON HUGHES, Plaintiff, vs. J. HERMAN GENGLER, Defendant.	CIVIL NO. 9851 FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial on April 28, 1967 before this Court sitting without a jury.

The plaintiff appeared in propria persona, and the defendant was represented by John P. Hyland, United States Attorney, through William B. Shubb, Assistant U.S. Attorney.

Evidence, both oral and documentary, having been offered on behalf of the plaintiff and received by the Court, and the matter having been duly submitted, the Court having thereafter rendered its verdict in favor of the defendant and against the plaintiff and filed its Memorandum and Order on May 1, 1967, which is incorporated herein by reference, now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Defendant is Postmaster of the United States Post Office at Marysville, California, and was at all times involved herein acting under color of such office.

2. A letter arrived at the Marysville Post Office addressed to the plaintiff on or about May 31, 1966.

3. An employee of the Post Office determined that there was three cents postage due on said letter and made that fact known to the plaintiff.

4. Plainiff paid the three cents "under protest."

5. Plaintiff was not in any way coerced into paying the said three cents, but rather had the clear choice himself whether to pay or not to pay the said amount allegedly due.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action under the provisions of Title 28 U.S.C.§§ 1442(a)(1) and 1391(e).

2. Plaintiff is not entitled to recover the three cents paid.

3. Plaintiff is not entitled to recover his costs of suit herein.

4. Plaintiff is entitled to recover nothing from the defendant herein.

5. Defendant is entitled to judgement against the plaintiff in this case.

Let judgement be entered accordingly.

DATED: UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RILEY LEON HUGHES, Plaintiff,	CIVIL NO. 9851
vs.	JUDGMENT
J. HERMAN GENGLER, Defendant.	

This cause came on regularly for trial on April 28, 1967 before this Court sitting without a jury.

The plaintiff appeared in propria persona, and the defendant was represented by John P. Hyland, United States Attorney, through William B. Shubb, Assistant U.S. Attorney.

Evidence, both oral and documentary, having been offered on behalf of the plaintiff and received by the Court, and the matter having been duly submitted, the Court having thereafter rendered its verdict in favor of the defendant and against the plaintiff and filed its Findings of Fact and Conclusions of Law, which by reference are made a part hereof:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the plaintiff take nothing by his complaint herein, and that judgment be, and it is hereby entered for the defendant and against the plaintiff in this action.

DATED:

UNITED STATES DISTRICT JUDGE

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 877

RILEY LEON HUGHES, PETITIONER

v.

J. HERMAN GENGLER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In this action brought against the Postmaster of the United States Post Office at Marysville, California, petitioner seeks to recover three cents "postage due" which he, as an addressee, paid "under protest." An air mail, special delivery letter, with stamps totaling only 35 cents affixed,[1] was mailed to petitioner, addressed to his post office box number in Marysville. When it was received at the Post Office it was indorsed "Postage Due 3 Cents" and a notice was placed in petitioner's box informing him that the letter could be picked up at the General Delivery Window on payment of the three cents. Two or three days

[1] The proper amount was 38 cents—30 cents special delivery fee and 8 cents air mail postage.

later, petitioner called at the window. After complaining that he was not getting special delivery service and that the postage was, therefore, more than sufficient, he paid the three cents "under protest."

This action, seeking recovery of the three cents plus personal costs,[2] was originally filed in the Yuba County, California, Small Claims Court. Pursuant to 28 U.S.C. 1442(a)(1), respondent removed the action to the United States District Court for the Eastern District of California. Finding that petitioner had voluntarily paid the postage due (Pet. App. 12) the district court entered judgment against him. On appeal, the court of appeals declined to rest on its conclusion that affirmance would be warranted on *de minimis* grounds (Pet. App. 1), and went on to determine that under the applicable statutes and regulations the respondent postmaster had acted properly in requiring payment of the postage due before delivering the letter (Pet. App. 1–7). On October 2, 1968, judgment was rendered against petitioner, with costs.

Quite apart from the fact that this is in effect an unconsented suit against the United States, and that petitioner has failed to exhaust his administrative remedies (see 39 U.S.C. 4055; 39 C.F.R. (1966 rev.) 37.2), the carefully detailed opinion of the court below demon-

[2] The *ad damnum* clause was later limited to the three cents paid to respondent.

strates that respondent fully complied with the applicable regulations and that petitioner's claim is without merit.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969